

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

LARRY LUNAN, et al. : CASE NO. C-1-01-425

Plaintiffs : (Judge Weber)

vs. :
MYCOM GROUP, INC., et al. : DEFENDANTS' MEMORANDUM
Defendants : IN OPPOSITION TO PLAINTIFFS'
: MOTION TO STRIKE DEFENDANTS'
: POST-TRIAL BRIEF

The Plaintiffs have accurately quoted the discussion which occurred at the very end of the trial concerning the filing of Proposed Findings of Fact and Conclusions of Law.

The undersigned counsel understood the Court to authorize the parties to submit such proposed findings and conclusions, and to substantiate the submissions with legal argument.

The Defendants' Proposed Findings of Fact and Conclusions of Law, which appear at pages 16 through 21 of Defendants' Post-Trial Brief and Proposed Findings of Fact and Conclusions of Law take into account testimony that was elicited at trial. The trial testimony upon which Defendants' Proposed Findings of Fact and Conclusion of Law are based is summarized at pages 1 through 10 of Defendants' Post-Trial Brief. The Defendants' "Argument", which appears at pages 10 through 16 of Defendants' Post-Trial Brief is intended to provide the "justification" referred to by the Court. Defendants did not intend to take undue advantage of the Plaintiffs in submitting this legal argument. Rather, Defendants intended to support their proposed findings of fact and conclusions of law by making reference not only to the trial testimony itself but to the case law which is applicable to the trial testimony.

For these reasons, Defendants respectfully submit that Plaintiffs' Motion to Strike Defendants' Post-Trial Brief is not well taken and should be overruled.

/s/ James M. Moore

James M. Moore (#0009476)
Trial Attorney for Defendants, Mycom
Group, Inc., Patricia A. Massey, G. Allan
Massey, George W. Young, Joan Carroll
and Terry Seipelt
312 Walnut Street, Suite 2300
Cincinnati, Ohio 45202-4091
(513) 421-6630 Telephone
(513) 421-0212 Facsimile

Of Counsel:

LINDHORST & DREIDAME
312 Walnut Street, Suite 2300
Cincinnati, Ohio 45202-4091
(513) 421-6630 Telephone
(513) 421-0212 Facsimile

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been sent by regular U.S. Mail to Matthew D. Davison, Esq. and Steven H. Trent, Esq., Attorneys for Plaintiffs, Baker, Donelson, Bearman, Caldwell, Berkowitz, PC, SunTrust Bank Building, Baker, 207 Mockingbird Lane, P. O. Box 3038, Johnson City, Tennessee 37602; and Stephen A. Watring, Esq., Dunlevey, Mahan & Furry, 110 North Main Street, Suite 1000, Dayton, OH 45402-1738, this 15th day of January, 2004.

/s/ James M. Moore

James M. Moore
Attorney at Law

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